

Riverside County MS4 Tentative Order No. R8-2009-0033
Comments/Responses 1st Draft MS4 Permit July 23, 2009

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1	Item No.	Commenting Parties & Page	Section No./Topic	Comment (most comments are verbatim from the comment letters or emails)	Response
2	1	CICWQ, Pg 2	Finding No. II.G.15	EIA is being misapplied in the LID context (See CICWQ Comments on Orange County MS4 Permit, February 2009). Accordingly, we recommend striking the EIA reference and supporting citations (footnotes 13 and 14) in Finding No. 15.	Use of EIA as a performance standard has been deleted from the draft Order.
3	2	CICWQ, Pg 2	XII.E.3; pg 89	XII E.3 (the reference to Section XII.D.5.a.1 should be changed to XII.D.4.a.1);	Sections XII.E.3 and XII.8 in the first public draft have been consolidated to Section XII.E.2. Reference to XII.D.4.a.1 has been corrected in Section XII.E.2 in the October 22, 2009 draft.
4	3	CICWQ pg 3	XII.E.8.: New Development (Including Significant Redevelopment)	CICWQ suggests the following permit modifications (in underline) to reflect the explicit use of biotreatment LID BMPs to meet the volume capture standard: Section XII.E.8. "The Permittees shall reflect in the Water Quality Management Plan Guidance and Template and require each priority development project to infiltrate, harvest and re-use, evapotranspire, or bio-treat the 85th percentile storm event ("design capture volume"), as specified in Section XII.D.4 XI.D.5.I.1 above. Any portion of the design capture volume that is not infiltrated, harvested and re-used, evapotranspired, captured, or bio-treated onsite by LID BMPs shall be treated and discharged using LID or similarly effective treatment control BMPs or mitigated in accordance with the requirements set forth in Section XII.E.8 and/or Section XII.F, below. " A properly engineered and maintained bio-filtration, bio-retention, or other bio-treatment system may be considered only in accordance with the priorities specified in Section XII.E.7.	As CICWQ indicated, infiltration, harvesting and reuse and evapotranspiration are more effective LID BMPs to remove pollutants and to address hydrologic conditions of concern compared to biotreatment. We agree that bio-treatment should be part of the LID toolbox, however, only if a feasibility study has been completed and the bio-treatment system is properly designed and maintained. The pertinent text from Section XII.E.8 has been incorporated into Section XII.E.2 of the October 22, 2009 draft of the Tentative Order.
5	4	CICWQ, Pg 4	XII.E.8: New Development (Including Significant Redevelopment)	We agree that LID BMPs that retain storm water on site should be used when it is optimal to do so. We do not think, however, that such BMPs should be mandated as a condition of permit compliance to the complete exclusion of other options. Such an approach would impose a universal hydrology standard mandating the on-site retention of a certain volume of water, regardless of likely water quality implications. Vegetated LID BMPs such as biotreatment and biofiltration must be available to a project developer to meet the LID standard without the requirement to perform an infeasibility analysis.	
6	5	CICWQ, Capture Volume, Pgs 4 and 5	XII.E.8: New Development (Including Significant Redevelopment)	Mandating the complete on-site retention of capture volume (i.e. runoff that never leaves as surface flows) is not a reasonable approach for a number of reasons...	The design capture volume (equivalent to that produced from the 85th percentile storm event) is a reasonable LID measurable goal to manage the more frequent storm events. Generally, depending on native soil/vegetation these types of storms would not typically produce runoff in the undeveloped, and unsaturated state. Since this approach would generally mimic predevelopment conditions during the more frequent less intense storms, the probability of occurrence of potential environmental imbalance referred to in the comment such as changes in the habitat type and hydrology of ephemeral flows, rising groundwater and resultant geotechnical instability, seismic risk and potential for liquefaction, mobilization of pre-existing contamination, etc. should not be a concern.
7	6	CICWQ, Harvest Systems, Pgs. 5 and 6		Rainfall and storm water capture and harvest systems, given the volume of water that they have to handle under the existing sizing standard, are in our estimation generally infeasible except for the largest of development scales because of the inability to regenerate volume in harvest and use storage tanks given the timing of precipitation in southern California relative to irrigation needs and the back-to-back nature of winter rain events. Harvesting is limited by reuse option, social acceptability, competing policy goals, and economic considerations, including the need to demonstrate that the water quality benefits of this approach warrant the significant investment entailed. A significant obstacle to harvesting is the limited availability of reuse options, whether on a local or regional basis. ...	Storm water harvesting has been used in various parts of the country, including in Southern California. Storm water is a precious resource that should be harnessed to the maximum extent possible. There are several options, including: infiltration, harvesting and reuse and evapotranspiration, that must be considered in site design. In certain cases sub-regional and regional solutions, as described in Section XII.E.1, may be considered. The Permittees and/or the project proponents may also enter into partnerships for larger scale harvesting and longer term storage (surface and underground reservoirs) for later re-use and other watershed or project specific strategies to manage water quality and hydromodification issues.

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7 8		CICWQ, Regional or sub-regional bio-treatment BMPs, Pg 6		We are also concerned about the continuing relegation of regional or sub-regional biotreatment type BMPs to a less favored status. Specifically, biotreatment BMPs including natural treatment systems such as those that are part of the Irvine Ranch Water District's Natural Treatment System in Orange County can remove vast quantities of pollutant load, and provide other benefits such as habitat, flood control, and aesthetic, recreational and educational value. To relegate multi-benefit biotreatment BMPs to a status inferior to on-site retention BMPs is not justified on a water quality basis, and is bad public policy...	We have encouraged regional and sub-regional treatment approaches to water quality problems starting in our 2002 permit. The draft Order takes this a step further with the requirement for a Watershed Action Plan (Section XII.B) to promote a coordinated management approach to address water quality and hydromodification issues. The draft Order does not prohibit regional or sub-regional solutions.
8 9		CICWQ, Conventional BMPs, Pg 7		We agree that the use of conventional BMPs as the principal approach for storm water management should be a last resort, available only when objective infeasibility criteria are satisfied, and when off-site opportunities are not readily available. When LID BMPs are infeasible, and off-site opportunities are not available, the use of conventional BMPs that have been demonstrated to be effective on the pollutants of concern should be a compliance option.	Comment noted. See Sections XII.E.7.c. and XII.G.
9 10		Contech, 1	XII.E.3; pg 89	This section should be revised to require on-site retention of the water quality volume where technically feasible. Where that is not technically feasible, the retention volume should be maximized and any runoff discharged during the water quality event must be treated to the Maximum Extent Practicable...	Comment noted. The draft Order specifies capture volume based on the 85th percentile 24-hour storm event using preferred LID BMPs and requires conventional treatment of remaining volume where onsite and offsite capture and retention are not feasible. See Sections XII.E.7.c. and Section XII.G.
10 11		Contech, 1	XII.E.4; pg 89	"Allow the use of subsurface infiltration systems with adequate pretreatment to protect groundwater resources."	Subsurface infiltration with pretreatment is an LID option, except in specified high risk areas. See Section XII.D.8, Groundwater Protection.
11 12		Contech, 2	XII.E.7, Pg 90	Replace: "(3) Vegetated BMPs that promote evapotranspiration including bioretention, biofiltration and bio-treatment." With: "(3) BMPs that promote evapotranspiration, including landscape based retention and filtration"	The current language provides the preferred order for LID BMPs including biological treatment systems.
12 13		Contech, 2	XII.E.8, Pg 90	Filter should replace biotreat. There are media filters that outperform biotreatment and should be considered to meet MEP. An alternative language option could be borrowed from the storm water quality credit criteria from the LEED 2009 rating system which requires: BMPs used to treat runoff must be capable of removing 80% of the average annual postdevelopment total suspended solids (TSS) load based on existing monitoring reports. BMPs are considered to meet these criteria if: • They are designed in accordance with standards and specifications from a state or local program that has adopted these performance standards, OR • There exists infield performance monitoring data demonstrating compliance with the criteria. Data must conform to accepted protocol (e.g., Technology Acceptance Reciprocity Partnership [TARP], Washington State Department of Ecology) for BMP monitoring.	In most cases, a properly designed and maintained biological treatment system could encounter less problems with operation and maintenance compared to some of the filter media that is currently available. In certain applications, conventional treatment systems such as those that use media filtration could be more effective. The proposed Order does not prohibit the use of conventional treatment systems.
13 14		Contech, 4	XII.E.10.iii.1.c., Pg 93	Either remove the 3% Effective Impervious Area (EIA) requirement, or define disconnection as retention of the water quality volume from disconnected areas.	The EIA requirement has been removed from the draft Order.

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14	14	Contech, 5	XII.F.1., Pg 93	Add the following text to the beginning of the section: "If on-site retention of the water quality volume is not feasible, runoff reduction should be maximized and the most effective and technically feasible control must be utilized to treat any portion of the water quality event that is discharged. If the project does not implement the most effective and technically feasible, treatment controls with moderate effectiveness for the pollutants of concern expected to be generated on site must be implemented. In addition, the cost difference between the most effective technically feasible BMP and the BMP implemented X 1.5 must be paid to the Urban Runoff fund. Alternatively, the difference between the water quality volume and the amount of runoff retained by the BMPs implemented on site times 1.5 may be retained on another site in the same watershed."	Please see Section XII.E.7.c of the October 22, 2009 draft. Section XII. G includes alternatives and in-lieu programs.
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16	15	Contech, 6	XII.G.4., Pg 96	Please make it clear that the operation and maintenance tool provisions also apply to LID BMPs including bioretention cells, infiltration systems and harvest and use system. Even where these systems are landscape based they must be inspected and maintained regularly to ensure adequate storage volume, hydraulic capacity and other operational functionality.	The operation and maintenance requirements are applicable to all LID and structural treatment control BMPs.
17	16	Contech, 5	XII.J.3	Please make it clear that this section also applies to LID BMPs. See previous comment.	The operation and maintenance requirements are applicable to all LID and structural treatment control BMPs.
18	17	Contech, 6	Appendix 4, Page 6 of 16	The definition of LID that appears here goes far beyond what is needed. This is not an appropriate place to editorialize regarding the possible benefits of an LID approach. The findings section may be a more appropriate location to include much of this information.	Definition has been revised.
19	18	Inland Empire Waterkeepers , pg. 1	XII.B.1. New Development;	This section provides the impetus for one year of uncoordinated activity. The water quality problems facing Riverside County are tangible and cannot be further delayed by an unreasonably distant drafting and implementation of a Watershed Action Plan.	This section has been revised; see the October 22, 2009 draft. Section XII.B of the October 22, 2009 draft consolidates the Watershed Action Plan into one subsection.
20	19	Inland Empire Waterkeepers , pg. 2	XII. C.1.c.iv	Please clarify the nature and extent of "watershed-scale retrofits" in those areas where "such measures are likely to be effective and technically and economically feasible and not likely to create vector problems." Waterkeeper requests that the following language be included into the Permit to clarify the extent of this retrofit project: 1. LONG-TERM RETROFIT STRATEGY a. By June 30, 2011, permittees shall develop a Retrofit Prioritization Plan (RPP) to prioritize areas where storm water retrofit strategies are likely to have the greatest benefits to water quality and beneficial uses relative to cost. The RPP shall incorporate procedures to prioritize and implement: 1) stand-alone retrofit projects directed at reducing or eliminating storm water discharge into at-risk waters; 2) project-triggered retrofits to existing and replaced pavement as part of transportation improvement projects; and, 3) opportunity-based retrofits of existing and replaced pavement that occurs as part of transportation improvement projects when permittees determine that it is cost effective to provide retrofits beyond those required to comply with the project-triggered retrofits.	In the October 22, 2009 draft, the long-term retrofit strategy has been incorporated into the Watershed Action Plan; see Section XII.B of the October 22, 2009 draft.
21	20	Inland Empire Waterkeepers , pg. 2	IX.D.	Waterkeeper encourages the Regional Board to entirely omit this section of the Permit. Section D is an analysis of the "Current Economic Conditions" facing the Permittees during this temporary financial downturn. Waterkeeper acknowledges that this analysis is not a finding by the Regional Board, rather this is information provided by the Permittees in an attempt to explain their precarious fiscal situation posed by the current financial crisis.	The language in Fact Sheet Section IX.D merely states information provided by the Permittees concerning their current fiscal situation.
22	21	Inland Empire Waterkeepers ; pg 3	XI.E.4;	Waterkeeper encourages the Regional Board to revise Section XI.E.4 for clarity and continuity to require the revision of "barriers for [the] implementation of LID" after they have been identified by the Permittees.	Section XII.C.1, requires the Permittees to submit action plans and schedules to address elimination of barriers to the implementation of the LID and hydromodification principles contained in Section XII.E. (October 22, 2009 draft).

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22	22	Inland Empire Waterkeepers ; pg 3	XI.E.4.i	Waterkeeper encourages the Regional Board to revise this subsection by defining "narrow streets." EPA document "Managing Wet Weather with Green Infrastructure: Green Streets" defines "narrow streets" and is used in footnote 80 of the Tentative San Bernardino County MS4 Permit. Waterkeeper is unaware of alternative definitions to this term, however, if the Regional Board intends to utilize the definition as it is understood in the EPA document then it should directly reference that document to provide Permittees with proper notice. Similarly, all government or industry manuals produced and relied upon for the development and enforcement of the adopted Riverside County MS4 permit should be clearly identified within the permit to provide guidance to regulated entities and the public alike.	Our review of the definitions for narrow streets indicates that different jurisdictions have used slightly different definitions. We have added a reference to the EPA document in Section XII.D.2.i of the Order which could be used as a guidance document.
23	23	Inland Empire Waterkeepers ; pg 3	XI.F.1	This section would be improved by listing factors of infeasibility such as construction that is lot-line to lot-line, subterranean parking, high groundwater, unfavorable or unstable soil conditions where infiltration is attempted, and any other factor submitted to the Regional Board for consideration.	Please note that this section has been revised to be consistent with the Orange County MS4 permit.
24	24	Inland Empire Waterkeepers ; pg 3	XI.F.3	This section should note that the issuance of a waiver should automatically trigger the establishment of urban runoff fund.	The establishment of an urban runoff fund remains an in-lieu option. The draft Order does not include it as a mandatory requirement. The draft Order also provides other options for the in-lieu program. (See Section XII.G of the October 22, 2009 draft.)
25	25	Inland Empire Waterkeepers ; pg 3	XI.F.4	It is the responsibility of the project proponent to complete the project in its entirety and not delay installation of post construction BMPs for HOAs. It could be years until the HOA is developed and fully capitalized so we urge the Regional Board to close this loophole with this permit revision.	The draft Order includes a requirement that regional treatment control BMPs shall be operational prior to occupation of any of the priority project sites tributary to the regional treatment BMP. This requirement addresses the HOA issue adequately.
26	26	Inland Empire Waterkeepers ; pg 4	General Clarifications	Waterkeeper requests a determination from Regional Board counsel what the implications would be as a result of the following expected actions: In the event that a REC-1 waterbody listed for fecal coliform impairment undergoes a Use Attainability Analysis to change the beneficial use to REC-2 or REC-X, while simultaneously the fecal coliform objectives are removed from the Basin Plan and replaced with an E. Coli objective - what would the new bacteria objective be? Would the waterbody still be impaired? Does this constitute back-sliding?	The Regional Board will be using the USEPA's established procedures for conducting use attainability analysis as contained in 40 CFR 131.10(g)(1)-(6). Under 40 CFR 131.10(g), states may remove a designated use which is not an existing use, or establish sub-categories of a use if the state can demonstrate that attaining the designated use is not feasible. Any new water quality standards adopted for E. Coli by the Regional Board will be consistent the federal water quality criteria and protective of the designated beneficial uses. In its September 9, 2009 comment letter on this draft Order, the USEPA has indicated that revisions to the MS4 permit to incorporate a lawfully developed and approved TMDL may not trigger anti-backsliding. If the anti-backsliding provisions of CWA section 402(o) apply to the effluent limitation being made less stringent, the effluent limitation may be revised to be less stringent if one of the "anti-backsliding" exceptions applies. For example, CWA section 402(o)(1) prohibits revision of an effluent limitation established on the basis of CWA sections 301(b)(1)(C), 303(d) or 303(e) unless one of the exceptions in CWA section 303(d)(4) are met. CWA section 303(d)(4)(A) would allow the relaxation of an effluent limitation based on a TMDL or other waste load allocation in waters not attaining a water quality criterion if the cumulative effect of all revised effluent limitations would assure attainment of the revised criterion or the designated use which is not being attained has been removed. In waters attaining a water quality criterion, CWA section 303(d)(4)(B) would allow relaxation of an effluent limitation based on a TMDL or other waste load allocation or any water quality standard or any other permitting standard if such revised limitation was consistent with the state's anti-degradation requirements. 125 IEW, 4 General Classifications. We also expect many REC-1 waters to be changed to REC-2, and many REC-2 waters changed to REC-X as a results of UAAs. The resulting scenarios should be analyzed and solutions considered to avoid degradation of water quality or back-sliding of regulations.
27	27	USEPA Region 9, 1	Fact Sheet page 7 of 52	The Clean Water Act's Agricultural exemption is overstated. This text should be revised to: "However, the CWA specifically excludes discharges composed entirely of return flows from irrigated agriculture and nonpoint source agricultural activities".	The permit language has been revised as suggested.
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28	USEPA Region 9, 1	LID Requirements	A number of LID provisions in the draft MS4 Permit for Riverside County should be changed to be consistent with the draft San Bernardino County MS4 Permit and the Orange County MS4 Permit.	As suggested by the USEPA, a number of sections have been revised and consolidated to be consistent with the San Bernardino and the Orange County Permits.	
29	USEPA Region 9, 2	XI.E.3	Delete and replace with the requirements of Section XII.E.8 and Section XII.C.7 of the Orange County permit. This could be moved into Section XII.E.8 of the Riverside County permit. A number of references to other sections of the Permit need to be corrected.	The October 22, 2009 draft incorporates the suggested changes and corrected the references to other sections and the footnotes.	
30	USEPA Region 9, 2	TMDLs	EPA supports the draft permit's incorporation of TMDLS.... Permit is consistent with the approach taken by the Orange County MS4 Permit	Comment noted.	
31	USEPA Region 9, 2	TMDLs	We are pleased to see the applicable WLAs incorporated into this draft permit as numeric effluent limits (consistent with Orange County permit). The numeric limits results in clear, measurable, and enforceable permit requirements.	Comment noted.	
32	USEPA Region 9, 3	TMDLs	The EPA Guidance (Establishing TMDLs Waste load Allocations for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs) states that when a non-numeric limit (i.e., BMP-based limit) is imposed in a permit, "the permit's administrative record...needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL." We have found the permitting agencies typically do to have the necessary supporting documentation ...to demonstrate that the specific BMPs are...sufficient to implement WLAs.	Comment noted.	
33	USEPA Region 9, 3	TMDLs	The draft permit is consistent with EPA's guidance that a permitting agency may use numeric effluent limits where the record does not demonstrate that non-numeric BMP controls will be sufficient to implement the WLA.... We support the Region in its efforts to include MS4 permit conditions that are increasingly prescriptive to ensure water quality is protected.	Comment noted. Consistent with the approved TMDL implementation plans, the October 22, 2009 draft provides for compliance determination with the WLAs based on the iterative BMP implementation process. The draft Order also requires the Permittees to develop a comprehensive plan designed to achieve wasteload allocations by the compliance dates specified in the TMDL.	
34	USEPA Region 9, 3	TMDLs	The draft permit's approach for incorporating WLAs as numeric limits is appropriate, and we strongly recommend against making any revisions to the draft permit that would make the TMDL provisions inconsistent with this Board's Orange County MS4 permit.	Comment noted. The revisions are consistent with the USEPA guidance for incorporating WLAs into NPDES permits.	
35	USEPA Region 9, 3	TMDLs conclusion	The draft permit's approach for incorporating WLAs as numeric limits is appropriate, and we strongly recommend against making any revisions to the draft permit that would make the TMDL provision inconsistent the this Boards Orange County MS4 permit.	Comment noted.	
36	USEPA Region 9, 4	MSAR Bacteria TMDL, VI.C.1.d.ii; pg 56	We recommend the permit specifically require that the revisions to the DAMP to address the bacteria WLA be submitted to the Executive Officer (EO) for approval. We note that Finding A.6 for the permit also commits to providing the public an opportunity to review and comment on all documents submitted to the Board in accordance with the permit. These revisions to the DAMP are an important item and should be submitted to the EO for approval and be subject to public review.	This section has been revised to require submittal of the plans to the Executive Officer for review and approval prior to incorporation into the DAMP and the LIP.	
37	USEPA Region 9, 4	MSAR Bacteria TMDL, VI.C.1.d.iii; pg 57	The permit would allow compliance with the WLAs to be measured at locations specified in the MSAR TMDL or "other appropriate urban source monitoring locations." We note that specific compliance points were approved by the SARB on April 18, 2008 in Resolution No. R8-2008-0044, which approved the MSAR monitoring plan. At a minimum, if alternate compliance points are to be used, they should be submitted to the EO for approval, with opportunity for public review and comment provided as well. The SARB's expectations regarding the number of other appropriate locations should also be provided in the permit.	Comment noted. Language has been added to indicate that approval by the Executive Officer would be required if alternate monitoring locations are proposed other than those in the approved plans.	
38	USEPA Region 9, 4	MSAR Bacteria TMDL, VI.C.1.d.iv; pg 57	We suggest language such as the following be added at the end of Section VI.C.1.d.iv.(b): "Each permittee shall quantify the BMP effectiveness of BMPs already implemented and newly recommended BMPs to reduce pollutant loads. The permittee shall also recommend a target date in which new BMPs will be implemented.	The proposed language was added to Section VI.D.1.d.iii.b of the October 22, 2009 draft..	
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39		USEPA Region 9, 4	Lake Elsinore/Canyon Lake Nutrient TMDLs, VI.C.2.a, pg 58	To improve the distinction between meeting the WLAs and the implementation tasks outlined in the TMDL, the interim milestones and tasks outlined in the implementation plan should be incorporated into the permit to ensure the achievement of the final WLAs.	Some revisions have been made in the October 22, 2009 draft based on this comment. There are interim WQBELs, which are the plans and programs already approved by the Regional Board. Then there is a requirement to develop a comprehensive plan designed to come into full compliance with the WLAs by the compliance dates specified in the TMDLs.
40		USEPA Region 9, 5	VI.C.2.f.i; pg 61	We recommend clarification regarding the number of "representative" monitoring locations which would be required. The permit should provide expectations for the magnitude of the required monitoring pursuant to this section. At a minimum, the permit should also ensure consistency with the monitoring requirements of the TMDL implementation plan, including the minimum sampling frequency and locations specified.	The TMDL Implementation plans did not specify monitoring location to determine compliance with the WLAs. These locations will be identified as part of the model updates or monitoring plans.
41		Calimesa, 2	General	The Tentative Order Goes Beyond Federal Law and Constitutes Unfunded State Mandates. To the extent the Tentative Order imposes additional programs on the Permittees without providing additional funds, they are unfunded mandates.	As explained in Finding No. II.B.10 , this permit provision is required under federal law. For reasons stated in this finding and the Fact Sheet, Staff disagrees that it is an unfunded mandate subject to subvention, and will respond accordingly if a claim is filed with Commission on State Mandates.
42		Calimesa, 2	IV.A.10	Nothing in the Clean Water Act requires the Permittees to adopt green infrastructure/low impact development principles.	Section 402(p) (3)(B)(iii) of the Clean Water Act requires municipal permittees to control the discharge of pollutants to the maximum extent practicable (MEP). The USEPA and other regulatory agencies, including this Regional Board, have recognized green infrastructure/LID BMPs as a control measure that is consistent with the MEP standard.
43		Calimesa, 3	subsections I on page 67 of the Tentative Order	Subsection I requires that each Permittee submit a certification statement in its Annual Report, signed by its legal counsel, that the Permittee has obtained all necessary legal authority in accordance with 40 CFR 122.26(d)(2)(i)(A-F). The Clean Water Act does not require the certification statement mandated by the Regional Board.	40 CFR 122.26(d)(2)(i) requires the Permittees to demonstrate that they have established adequate legal authority. This provision was included in the 2002 Riverside County Permit. Our audit of the Riverside County Permittees indicated that a number of Permittees have not established the needed legal authority. The legal certification is a tool to determine compliance with this requirement.
44		Calimesa, 3	subsection J on page 67 of the Tentative Order	Requires that Permittees annually review the adequacy of their ordinances and implementation and enforcement response procedures and submit findings of these reviews, along with supporting details and recommended corrective actions and schedules as part of the Annual Report. This requirement also goes beyond the Clean Water Act.	Section J is now Section H. Section H requires an annual evaluation of the effectiveness of implementation and enforcement procedures consistent with the federal regulations. 40 CFR 122.26(d)(iv) and 40 CFR 122.26(d)(v).
45		Calimesa, 3		The Tentative Order goes beyond federal law, as the Tentative Order is at least twice as long, and in some cases, three times as long as other MS4 Permits developed by other Regional Boards in the State of California.	While this permit may be longer or shorter than other MS4 permits, the length of the permit is not an appropriate metric as to whether the permit is consistent with federal law. The draft Order is in accordance with the federal laws and regulations.
46		Calimesa, 4		Without voter approval, Copermittees do not have the authority to levy service fees to pay for compliance with the Order.	Comment noted.
47		Calimesa, 4		The Fact that Industrial Dischargers are More Strictly Regulated than Municipal Dischargers is Irrelevant to the Unfunded Mandate Issue. Tentative Order implies that, in lieu of coverage under the Order, Copermittees could cease all discharges from their MS4s. The City respectfully disagrees that these suggested alternatives provide Copermittees with any real choice. To cease discharging from their MS4s is impossible and, thus, not a real choice. Accordingly, it is disingenuous for Regional Board staff to suggest that Copermittees have voluntarily chosen coverage under the Order and that the Order cannot be considered a State mandate.	We disagree with the analysis. This finding merely points out the strict prohibition on pollutant discharges without a permit as specified in in Section 402 of the federal Clean Water Act. This issue is addressed in Section II of the January 19, 2010 version of the Fact Sheet.
48		Calimesa, 5		By requiring Permittees to adopt green infrastructure/low impact development ordinances (Paragraph 10 of page 50 of Tentative Order), the Regional Board is taking over the land use powers of the municipality in violation of the Tenth Amendment.	The draft Order implements the federal Clean Water Act. Consistent with the MEP standard specified for municipal storm water discharges, the draft Order requires the Permittees to implement BMPs that are generally considered as meeting the MEP standard. The requirements specified in the draft Order do not infringe upon the land use authority of the municipalities.
49		Calimesa, 6	subsection 4 on page 54	REQUIREMENTS FOR "FETDS" [Facilities that extract, treat and discharge water diverted from Waters of the US] IN THE TENTATIVE ORDER ARE NOT SUPPORTED BY LAW AND PROVIDE DISINCENTIVES TO IMPROVING WATER QUALITY.	We disagree. Water diversion, treatment and release are not new and have proven water quality benefits. In fact, this provision is to facilitate diversion for treatment to improve water quality.
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50	50	Calimesa	XI (starting at page 70)	THE TENTATIVE ORDER IMPOSES REQUIREMENTS THAT ARE PROHIBITIVELY EXPENSIVE AND BURDENSOME	The Permittees approve new developments, businesses and commercial and industrial establishments and benefit from property taxes, business license fees, etc. These facilities that the Permittees allow within their jurisdiction also cause an increase in urban runoff pollution. It is reasonable to require the municipalities to address these problems as required under the Clean Water Act. The requirements specified in the draft Order are consistent with the Clean Water Act and its implementing regulations.
51	51	San Jacinto, 1	Low Impact Development and Hydromodification	If adopted in its current form, the Draft Permit may require projects that are incapable of implementing LID BMPs that retain and treat storm water to pay a mitigation fee in addition to implementing other traditional BMPs.	Contribution to an Urban Runoff Fund is only one of the options under the in-lieu program. The permittees may develop a credit system as described in Section XII.G.4.
52	52	San Jacinto, 1	n	There is no rational basis for requiring such projects to pay a penalty when they can deploy other traditional BMPs that will treat storm water to levels that are equivalent or better than the LID and on-site retention BMPs currently espoused by the Draft	Paying a mitigation fee is only one of several options that a developer may choose for the project. See Section XII.G.4 for other options.
53	53	San Jacinto, 1	Infringement upon land use authority	The City is aware that these issues, and other concerns regarding the Draft Permit's LID and Hydromodification requirements (including concerns regarding the Regional Board's authority to infringe on the City's land use authority) were raised during the approval process for the North Orange County MS4 permit.	The draft Order implements provisions of the Clean Water Act and does not infringe on the local government's land use authority. Please note that some of the requirements specified in the draft Order, such as LID, are consistent with the MEP standard applicable to the Co-Permittees as per the Clean Water Act.
54	54	San Jacinto, 2	Numeric Effluent Limits	The City requests that the Draft Permit be revised to remove all references to "Effluent Limitations," and all hard numeric targets, specifically those in the TMDL section. This will ensure that the Regional Board retains the discretion to impose penalties where it has determined they are warranted, without triggering mandatory penalties in situations where fines may not be the best solution.	The WLAs are from the approved TMDLs and the target dates for meeting those WLAs are those specified in the approved TMDL implementation plans. Some clarification has been added to the TMDL provisions. See October 22, 2009 draft.
55	55	San Jacinto, 9	Incorporation of TMDLs	The City objects to the inclusion of Total Maximum Daily Loads ("TMDLs") for the Middle Santa Ana River, and Canyon Lake and Lake Elsinore in the Draft Permit. It is the City's belief that the goals of both TMDLs can be achieved through implementation of the other programs in the Draft Permit, and overall participation in the TMDL working groups the Regional Board has already established.	Federal regulation at 40 CFR 122.44(d)(1)(B)(vii) require that NPDES permits be consistent with the assumptions and requirements of the approved TMDLs. The October 22, 2009 draft Order recognizes the work that is being done by the stakeholder group and the potential for meeting the WLAs through implementation of BMPs, including in-lake control measures.
56	56	San Jacinto, 10	Joint and Several Liability for TMDLs	The City is concerned that portions of the Draft Permit's TMDL requirements could be interpreted as holding all of the Permittees responsible for implementing the TMDLs, regardless of whether their discharges impact the entire watershed, or other parties.	Each Permittee is only responsible for the urban runoff component from its facility.
57	57	San Jacinto, 11	Cost Considerations and Compliance with State Law	Pursuant to Article XIII B, Section 6 of the California Constitution, any NPDES requirements that are not explicitly required by federal law must be funded by the state. (County of Los Angeles v. Commission on State Mandates (2007) 150 Cal.App.4th 898, 91	As explained in Finding No. II.B.10, the provisions in this permit are required under federal law. Staff disagrees that it is an unfunded mandate subject to subvention, and will respond accordingly if a claim is filed with Commission on State Mandates. Also see Section II of the January 19, 2010 version of the Fact Sheet for a further discussion on the unfunded mandate issue.
58	58	RCFCD, 9	VI.D. & Fact Sheet pg. 24	The adopted TMDLs and Implementation Plans specify strategies to be followed by the MS4 Permittees in attaining the WLAs and are focused on implementation of best management practices ("BMPs"), rather than compliance with numeric effluent limitations, in accordance with USEPA Headquarters and State Board policy and guidance, which acknowledges the complexity of urban stormwater runoff, both in terms of varying quality and quantity and the difference between addressing pollutants contained in such runoff from typical NPDES industrial discharges, which are relatively constant in quantity and quality and can be addressed with end-of-pipe treatment. This is acknowledged in the Fact Sheet to the Tentative Order: "Due to economic and technical infeasibility of full-scale end-of-pipe treatments and the complexity of urban storm water runoff quality and quantity, MS4 permits generally include narrative requirements for the implementation of BMPs in place of numeric effluent limits." See Fact Sheet at p. 24 (emphasis added).	The October 22, 2009 draft Order recognizes the BMP iterative process to comply with the WLAs.
59					

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60	59	RCFCD, pg. 12 & 13	Antibacksliding Concerns	The MS4 Permittees expect that if the proposed WLA requirements in the Tentative Order are expressed as numeric effluent limitations, the Task Force effort to develop site-specific water quality objectives throughout the area will be undermined.	Comments on anti-backsliding noted. CWA section 303(d)(4) provides relevant exceptions to the anti-backsliding rule. Also see the detained response regarding this issue to Comment No. 26, above.
61	60			While the antibacksliding rule allows for a less stringent effluent limitation if "information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance" (33 U.S.C. § 1342(o)(2)(B)(i)), this exemption does not apply "to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters" 33 U.S.C. § 1342(o)(2). A detailed analysis of the effects of the anti-backsliding provisions written by California attorney Melissa Thorne is in Attachment 9.	
62	61	RCFCD, 13	VI.C.1.d.iii	The Permittees are concerned that these requirements exceed, and in some cases, short-circuit TMDL compliance programs developed through the TMDL Task Forces in conjunction with Regional Board staff. Such as a "pre-compliance monitoring program" based on "locations specified in the MSAR Bacterial Monitoring Indicator TMDL or other appropriate urban source monitoring locations."	Although the adopted TMDLs identified WLAs for urban discharges, the implementation plans did not specify monitoring locations or the manner of compliance determination with the WLAs. In the case of the MSAR TMDL, we have no objection if the Permittees use the approved USEP locations to evaluate compliance with the WLA, but if other monitoring locations are selected, those would require Executive Officer approval. The implementation plan also requires immediate actions such as BMP implementation to reduce pollutants in urban discharges. It is reasonable to require interim-monitoring prior to the compliance dates to evaluate effectiveness of those BMPs as they are implemented.
63	62	RCFCD, pg. 14 & 15		The Permittees also understand that the Board is contemplated adding additional TMDL monitoring compliance text to the Monitoring and Reporting Program supporting, or expanding the requirements that are already contained in the Tentative Order. The Permittees are opposed to those additions...	Without a proper monitoring program, it would be difficult to determine progress towards compliance with the WLAs.
64	63	RCFCD, 15	VI.C.1.d.iv	The Permittees would also note that although direct monitoring of outfalls might seem upon first glance to be a effective approach to evaluating TMDL compliance, that in fact, it is likely to be a fruitless effort. This is because the Permittees MS4 Outfalls represent a combined nutrient load from urban, agricultural, natural, tribal and other state and federal sources – each individually regulated under the TMDL and which are not under the jurisdiction of the Permittees.	We recommend that the permittees select locations that are representative of urban discharges from the Permittees facilities. We understand that it may not be always possible; we are open to recommendations from the TMDL taskforces for appropriate monitoring locations.
65	64	RCFCD, 15		To address the issues raised above, the Permittees would instead propose the following approach: 1) Revise the Permit to strictly require compliance with the TMDL Implementation Plan Tasks for MS4 Permittees that are named as stakeholders in the TMDL. . These tasks already address source assessment and TMDL compliance monitoring by deleting Sections VI.C.1.d.iv, VI.C.1.d.v and VI.C.2.f.	See the October 22, 2009 draft; appropriate changes have been made to the TMDL sections.
66	65	RCFCD, 15	VI.D.2	Similar text is proposed for the LE/CL TMDL in Section VI.D.2. The Permittees believe that this is a more effective and flexible approach to measuring implementation of the TMDL WLA. Specifically, it:	This Order regulates the discharge of urban runoff. While the TMDL task force should rightfully address identification of all sources from the contributing drainage area, once the allocations have been established and translated into permit requirements such as the MS4 permit or the CAFO permit, the stakeholder group evaluates the overall progress towards achieving the WLAs. The proposed Order requires compliance with the WLAs through implementation of BMPs as per the approved implementation plans.
67	66	RCFCD, 15	VI.D.2	1) Allows the Permittees to develop a program effectiveness assessment program (using both monitoring data and load reduction data) that can be rightly, and appropriately, integrated into the existing efforts of the TMDL Task Force. The Permittees fully expect to work with the TMDL Task Force and designated Regional Board staff to develop these programs.	The TMDL triennial review provides an avenue for overall TMDL assessment. See revisions to the TMDL section in the October 22, 2009.

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67	67	RCFCD, 15	VI.D.2	2) Eliminates the potential for conflict between the efforts of the TMDL Task Force and the requirements of this Permit; thereby providing the flexibility to work with the Regional Board's TMDL staff and Permitting staff to finalize these programs outside of the permit renewal process.	See revisions to the TMDL section of the permit in the October 22, 2009 draft of the proposed Order.
68	68	RCFCD, 16	VI.D.2	3) Continues to allow the Permittees the flexibility to revise TMDL BMP programs based on updated science, reports and recommendations from the TMDL Task Force and does not forestall or short-circuit selection of BMPs based on addressing the underlying impairment as opposed to focusing on jurisdictional compliance.	The October 22, 2009 draft of the MS4 provides the flexibility through a BMP iterative process.
69	69	RCFCD, 16	II.F.5	As individual dischargers, the MS4 Permittees cannot be held liable under either the Clean Water Act or the Water Code for discharges caused by others. This concern was raised and addressed in the Lake Elsinore and Canyon Lake TMDL Task Force Agreement and should also be addressed in this Tentative Order for consistency and clarity.	See the October 22, 2009 draft of the proposed Order.
70	70	RCFCD, 19	XII.C.3.	The requirements of Sections XII.C.3.c through XII.C.3.e appear to be imposing certain approaches to local land use planning, with references to incorporating "Smart Growth principles," and "New Urbanism". Land use planning is fundamentally a local concern, beyond the scope of the Tentative Order and the Regional Board's authority.	A number of options are provided for the Permittees to come into compliance with the provisions of this Order. These provisions do not intrude into local land use authority.
71	71	RCFCD, 19	XII.B.2	The Permittees have an existing Management Steering Committee (MSC), comprised of City Managers or their designated alternates. Section XII.B.2 should be revised to provide the Management Steering Committee the authority to designate the TAC representation. Further, all documents proposed for submittal to the Board are reviewed and approved by the MSC, thereby ensuring a management staff from the Permittees will be involved in the final approval and implementation of the WAP.	Comment noted. The Watershed Action Plan section has been revised.
72	72	RCFCD, 20	V.A	The Permittees request that this prohibition be revised to use terms defined in the Riverside County proposed Tentative Order Glossary ("Glossary"), including "IC/ID" and "Illegal Discharges".	Tentative Order has been revised as requested.
73	73	RCFCD, 20	V.E	The Permittees request that this prohibition be made consistent with the Orange County Permit and defined terms in the Glossary.	The requested revisions have been made in the October 22, 2009 draft.
74	74	RCFCD, 20	V.F	This prohibition is not consistent with the Basin Plan and is not contained in the recently adopted Orange County Permit or the 2002 Riverside County NPDES MS4 Permit ("current Riverside County Permit"). The Permittees request its deletion.	This prohibition is consistent with the waste discharge prohibitions contained in Chapter 5 of the Basin Plan.
75	75	RCFCD, 21	V.G	This prohibition is not consistent with the Basin Plan and is not contained in the recently adopted Orange County Permit or the current Riverside County Permit. The Permittees request its deletion.	Since these types of wastes are adequately regulated under other statutes and regulations, the requested revision has been made.
76	76	RCFCD, 21	V.H	Requirement V.H of the Tentative Order prohibits the disposal of pollutants to public or private land. It is not consistent with language in the Basin Plan and is not contained in the recently adopted Orange County Permit or the current Riverside County	Please see the revised language in Section IX.C. - IC/ID of the October 22, 2009 draft.
77	77	RCFCD, 22	VIII	The proposed Tentative Order contains several provisions that both exceed the authority of local municipalities and are not contained in the Orange County Permit. Regulation of discharges from other jurisdictions entering the MS4 can be legally difficult.	Please see revisions in the October 22, 2009 draft.
78	78	RCFCD, 22	VIII.A.11	This subsection attempts to delineate the sanctions that should be contained in the Permittees' Storm Water Ordinances. This level of detail goes far beyond the requirements of the Clean Water Act regulations and impinges on the Permittees' authority to exercise their police powers. Article XI, section 7 of the California Constitution guarantees the right of municipalities to "make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws." As a constitutionally granted power, this authority may not be overridden by an order of the Regional Board.	Please see revised language in Section VIII.6 of the October 22, 2009 draft.
79	79				

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	A	B	C	D	E
79		RCFCD, 23	VIII.B.	This section states: "The Permittees shall progressively and decisively take enforcement actions against any violators of the Storm Water Ordinance. . . ." The proposed Order provides no definition of what constitutes "progressive" or "decisive" enforcement. More importantly, Permittees are entitled to exercise discretion in the enforcement of their ordinances, and the RWQCB has no legal authority to control or constrain that discretion. Also, Permittees should not face jeopardy if there is a subjective disagreement as to whether Permittees' enforcement of their own ordinances is not "progressive" or "decisive" enough for a third party citizens' enforcer or the Regional Board. Any requirement in the permit should be capable of objective review. That sentence should be deleted.	Please see the revisions in the October 22, 2009 draft.
80					
80		RCFCD, 23	VIII. C.	Indicating that "Co-Permittees shall use their authority to bring dischargers into immediate compliance with enforcement actions," is vague and ambiguous. If an enforcement action is brought against a discharger, the discharger will have the right to contest the enforcement action. "Immediate compliance" (itself a vague and ambiguous term) would therefore be impossible. This provision, like others in this section, attempts to improperly govern the prosecutorial discretion of the Permittees. It should be deleted.	See revised language in Section VIII.B of the October 22, 2009 draft.
81					
81		RCFCD, 23	VIII.D	This section requires the Permittees to promulgate ordinances that specify the BMPs for known pathogen or bacterial indicator sources. This requirement should be revised to allow the Permittees to specify BMPs with "ordinances, regulations, or internal policies." This will allow the Permittees to adopt the BMPs on a shorter timeline without mandating city council approval.	Please see the revisions in the October 22, 2009 draft. The comprehensive plan required under the revised TMDL provisions should address this concern.
82					
82		RCFCD, 23	VIII.G	This section requires the Permittees to "specify conditions in interagency agreements or other documents for accepting urban storm water into their MS4s from owners of other MS4 systems, such as school and college districts, universities, Caltrans, the Department of Defense, or Native American Tribes." As described more fully in the encroachment permit discussion below, municipalities have limited, if any, authority to require these entities to enter into agreements. This requirement should be revised to reflect the possibility that entering into such agreements, or placing specific requirements in such agreements, may not be possible.	Please see the revised language in Section VIII.E of the October 22, 2009 draft.
83					
83		RCFCD, 23		"The Permittees are encouraged to enter into Interagency agreements with owners of other MS4s, such as CalTrans, school and college districts, universities, Department of Defense, Native American Tribes, etc., to control the contribution of pollutants into their MS4 from the non-permittee MS4. The Regional Board will continue to notify the owner/operator of the MS4 systems and the Permittee if the Board issues a permit for discharges into the MS4 ."	Please see the revised language in Section VIII.E of the October 22, 2009 draft.
84					
84		RCFCD, 24	VIII.H and VIII.J	Sections VIII.H and VIII.J require the Permittees to review their storm water ordinances annually and conduct an effectiveness assessment. This is an overly aggressive schedule that may not result in effective reviews. Many facets of a municipality's storm water ordinance may not be implemented in a given year, making annual review of the ordinance a potential waste of resources. If ordinance review was conducted as part of the ROWD, it could provide a greater opportunity for an accurate assessment of the ordinance's effectiveness.	Section VIII.H has been revised and consolidated under Section VIII.F. Also see Section VIII.J (October 22, 2009 draft).
85					
85		RCFCD, 24	III.A.2.b, III.B.2.f	Regarding matters of drainage, California case law generally requires downstream property owners to accept surface waters that flow naturally from adjacent property owners. Locklin v. City of Lafayette (1994) 7 Cal.4th 327, 349. Thus, the MS4 Permittees do not have a legal basis for refusing to accept drainage from adjacent jurisdictions...	Please see the revisions in the October 22, 2009 draft. The draft Order requires the Permittees to control the discharge of pollutants to the MS4s consistent with the MEP standard so as to ensure that runoff from the MS4s do not cause or contribute to an exceedance of water quality objectives in the receiving waters.
86					

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	A	B	C	D	E
86	86	RCFCD, 25	XII.B	Section XII.B violates the provisions of the California Constitution by specifying and directing the MS4 Permittees' land use decisions. Article XI, section 7 of the Constitution guarantees municipalities the right to "make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws."	This section is not directing land-use decisions. This section requires the Permittees to identify water quality and hydromodification issues within the permit area and within their jurisdictions to be able to make land use decisions that minimize the impact to water quality. The section on Watershed Action Plan has been revised.
87	87	RCFCD, 25	II.B.10	First, the Regional Board has no jurisdiction or authority to make any determination as to whether the Order constitutes an unfunded state mandate. Only the Commission on State Mandates can make such a determination.	Finding II.B.10 is a finding that merely explains why the Regional Board considers that this Order does not have any unfunded mandates. This is further explained in Section II of the Fact Sheet.
88	88	RCFCD, 26	II.B.10.(b)	Finding B.10.(b) asserts that the Permittees' "obligation under this order are similar to, and in many respects less stringent than, the obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges." Permittees respectfully disagree with this assertion, as there are numerous requirements in the Tentative Order that are uniquely applicable to governmental entities. Again, however, this is a question that can only be adjudicated by the Commission on State Mandates through the filing of a test claim.	We agree that there are a number of requirements in the MS4 permits that are uniquely applicable to governmental entities. However, the entities regulated under the non-MS4 storm water permits are required to meet water quality standards utilizing the BAT/BCT standard whereas the standard applicable to the MS4 permittees is MEP. Also see Section II of the Fact Sheet.
89	89	RCFCD, 26	II.B.10.c	Finding B.10.c asserts that Permittees "have the authority to levy service charges, fees, or assessments to pay for compliance with this Order." This finding is speculative, erroneous on the facts and unsubstantiated in the record. The question of how a state mandate is to be funded is beyond the scope of the Regional Board's expertise and, again, is exclusively within the jurisdiction of the Commission on State Mandates.	This is a statement of facts. A number of municipalities have assessed fees for storm water management. Also see Section II of the Fact Sheet.
90	90	RCFCD, 27	VII.D	The Permittees request that provision VII.D of the Draft SAR MS4 Permit similarly be made consistent with SWRCB Order 99-05.	Please see the October 22, 2009 draft; Receiving Water Limitation in Section VII is consistent with the State Board order (99-05).
91	91	RCFCD, 29	III.A.2.h	III.A.2.h is recommended for deletion as it is a duplicate of III.A.1.b.	Deleted as requested.
92	92	RCFCD, 29	III.B.2.f	The decision to seek public input should be with the Permittees. This requirement should be removed. Section XX requires all documents submitted to the Executive Officer to go through public review.	Requested deletion made.
93	93	RCFCD, 30	III.C	Section III.C is proposed for modification to allow the Permittees to address legal update of the agreement and addition of new permittees with a single revision of the Implementation Agreement as opposed to requiring a two-step renewal process. Given the number of Permittees, costs of legal review, and the need to schedule two city council/Board of Supervisors items, it is not appropriate to explicitly mandate the schedules for the Implementation Agreement update.	Requested changes have been made; please see the October 22, 2009 draft.
94	94	RCFCD, 30	IV	Consolidate LIP requirements into a single section. Requirements IV.A.15 (revised) and IV.A.16 (revised) were relocated from Sections X.D and IX.F, respectively.	Please see the October 22, 2009 draft for changes to these sections.
95	95	RCFCD, 30	VI	The Permittees request that discharges covered by a NPDES Permit, Waste Discharge Requirements or waivers issued by the Regional or State Board be added to the Allowed Discharges list (See Section VI.A.4 (revised)).	Please see the October 22, 2009 draft.
96	96	RCFCD, 31	VII	The MS4 Permittees request that Section VII.D be made consistent with the precedential State Water Resource Control Board Order 99-05 and the 2009 Orange County NPDES MS4 Permit.	Requested changes made.
97	97	RCFCD, 31	VIII	Amend to be consistent with the 2009 Orange County NPDES MS4 Permit.	Requested changes made.
98	98	RCFCD, 31	IX	Several revisions to this section have been proposed to remove language that is duplicative of Section IV, V and XVI, removes duplicative requirements within the Section, and otherwise ensures that the Section identifies and uses defined terms.	Requested changes made.
99	99	RCFCD, 31	X.D.	Move to Section IV.	Requested changes made.
100	100	RCFCD, 32	XI.A	Propose to aggregate several common requirements related to inspection programs.	Requested changes made.

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101	101	RCFCD, 32	XI.B.3	Revise to eliminate the reference to changes of ownership, as this is not verified by construction inspectors. This requirement is addressed in Section XII.J.	Requested changes made.
102	102	RCFCD, 33	XI.D.6	Permittees are not aware of and cannot regulate (other than through code enforcement) transient mobile businesses that are not based (and therefore do not have a license to operate) within their jurisdiction.	Please see the October 22, 2009 draft.
103	103	RCFCD, 33	XI.E.4	Irrigation is addressed as part of AB1881 compliance for new developments. Existing areas have been addressed by cooperative efforts between Riverside County Permittees and water districts, including the use of tiered rates and outreach programs to promote efficient irrigation.	Please see the October 22, 2009 draft.
104	104	RCFCD, 34	XII.D.9.c through XII.D.9.e	Sections XII.D.9.c through XII.D.9.e have been deleted and replaced with Section XII.D.8.c (revised) consistent with language contained in the 2009 Orange County NPDES MS4 Permit. The revised language removed overly restrictive requirements on infiltration BMPs. Please note that the pretreatment requirements from the deleted sections are already addressed in Section XII.D.8.b.	Please see the October 22, 2009 draft.
105	105	RCFCD, 35	XII.E.5	Section XII.E.5 has been revised, as this is not a pollutant discharge related issue. This requirement is addressed through other regulations outside the Regional Board's authority. The revision notifies the Board of the Permittee's decision to implement	Please see the October 22, 2009 draft.
106	106	RCFCD, 35	XII.E.8	Section XII.E.8 is duplicative of Section XII.E.3	Requested changes made.
107	107	RCFCD, 35	XII.G.5	Section XII.G.5 is duplicative of Section XII.G.1	Requested changes made.
108	108	RCFCD, 36	XII.G.3, XII.G.4 and XII.G.6	Sections XII.G.3, XII.G.4 and XII.G.6 were deleted as they were also addressed by the broad requirements of XII.G.1	Requested changes made.
109	109	RCFCD, 36	XII.J.1	Section XII.J.1, the last sentence was moved to Section XII.J.5 (revised).	Requested changes made; see the October 22, 2009 draft.
110	110	RCFCD, 36	XIII	Section XIII.E has been modified for clarity. The requirement to evaluate the effectiveness of brochures was revised and moved to Section XIII.I (revised).	Requested changes made; see the October 22, 2009 draft.
111	111	RCFCD, 36	XIII.M	Section XIII.M has been revised and incorporated Section XIV.G for clarity.	Requested changes made; see the October 22, 2009 draft.
112	112	RCFCD, 36	XIV.A	Section XIV.A has been modified consistent with text in the 2009 Orange County NPDES MS4 Permit.	Requested changes made; see the October 22, 2009 draft.
113	113	RCFCD, 36	XIV.D	Section XIV.D has been modified consistent with text from the 2002 Riverside County NPDES MS4 Permit for clarity.	Requested changes made; see the October 22, 2009 draft.
114	114	RCFCD, 36	XIV.G	Section XIV.G has been moved to Section XIII.	Requested changes made; see the October 22, 2009 draft.
115	115	RCFCD, 36	XIV.H & I	Section XIV.H & XIV.I have been deleted since they are addressed by XIV.B	Requested changes made; see the October 22, 2009 draft.
116	116	RCFCD, 36	XIV.K	Section XIV.K.1.d has been modified to be consistent with the adopted General Construction Permit.	Requested changes made; see the October 22, 2009 draft.
117	117	RCFCD, 36	XIV.K.2.e	Section XIV.K.2.e has been deleted as it was duplicative with the De-Minimus permit.	Requested changes made; see the October 22, 2009 draft.
118	118	RCFCD, 36	XV	A complete rewrite of the training requirements to improve clarity is required. The revision clearly states curriculum, reporting and scheduling requirements, while maintaining the original intent of the provision.	Requested changes made; see the October 22, 2009 draft.
119	119	RCFCD, 37	XVI.C	Section XVI.C duplicated Section XX.A. Section XVI.C is text that is standard language in Section XX, so retained there. This requirement was replaced with text referencing IC/ID notification requirements contained in Section IX.B of this Order.	Requested changes made; see the October 22, 2009 draft.
120	120	RCFCD, 37	XVI.E	Modified to be consistent with the 2009 Orange County NPDES MS4 Permit.	Requested changes made; see the October 22, 2009 draft.
121	121	RCFCD, 37	XVII.B & C	Section XVII.B (revised) has been split into two requirements and incorporated Section XVII.C, the 2 nd requirement of Section XVII.B (revised) has been modified to increase clarity.	Requested changes made; see the October 22, 2009 draft.
122	122	RCFCD, 37	XVIII.B	Section XVIII.B (revised) has been modified to clarify that fiscal reporting requirements were specific to the NPDES MS4 Program.	Requested changes made; see the October 22, 2009 draft.
123	123	RCFCD, 37	XX.J, XX.K and XX.N	Sections XX.J, XX.K and XX.N were deleted as these requirements were not incorporated into the 2009 Orange County NPDES MS4 Permit or 2002 Riverside County NPDES MS4 requirements.	Requested changes made; see the October 22, 2009 draft.
124	124	RCFCD, 37	XXI.C	XXI.C was duplicative of Section XXI.B and deleted.	Requested changes made; see the October 22, 2009 draft.

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126	125	RCFCD, 37	XXI.D	Section XXI.D has been deleted. This text was inconsistent with the standard language incorporated into the 2009 Orange County NPDES MS4 Permit.	Requested changes made; see the October 22, 2009 draft.
127	126	RCFCD, 38	XXI.E	Section XXI.E has been amended to recognize that several Permittees are bifurcated between the San Diego and Santa Ana RWQCB regions. The proposed language allows Murrieta (who only has a few thousand acres in the Santa Ana Region) and Menifee (who only has a few thousand acres in the San Diego Region) to be wholly regulated under the Permit that oversees the majority of their jurisdiction	Requested changes made; see the October 22, 2009 draft.
128	127	RCFCD, 39	II.G.18 & XII.L	An alternative method to address the special limitations associated with the incorporation of street, road, highway and freeway projects into the WQMP framework.	Requested changes made; see the October 22, 2009 draft.
129	128	RCFCD, 40	IX.C and IX.D	The District, by partnering with other agencies and aggressively educating the public has been far more successful at addressing IC/IDs than by using proactive monitoring of outfalls, as required in our Santa Margarita Region NPDES MS4 Permit. Further, the cost of monitoring and the general inability to reasonably track the sources of illegal discharges detected through field monitoring and lab analysis work call into question the cost of such a program. The Permittees request that language be incorporated into the Permit to reflect the Permittees' existing efforts with regard to IDDE. Revisions have been proposed to Section IX	Requested changes made; see the October 22, 2009 draft.
130	129	RCFCD, 42	<u>TMDL Requirements pp42</u>	The MS4 Permittees believe that a BMP-based compliance approach, not numerical effluent limitations, reflects the intent of the TMDL Implementation Plans and the responses to comments from Regional Board staff during the promulgation of the TMDLs. It is clear that the Regional Board's intention had always been to provide for amendment of the TMDLs as scientific information and data allowed for a better understanding of the impaired waterbody function. Such a process would, however, be undermined by the direct incorporation of TMDL WLA into the NPDES MS4 Permit as numeric effluent limitations. The Permittees request that the RWQCB incorporate the TMDLs based on the recommendations contained herein	Please see USEPA's September 9, 2009 comment supporting the inclusion of WLAs as Water Quality-Based Effluent Limits. The Permit reflects the intent of the TMDL Implementation Plan to achieve compliance with the WLA through implementation of BMPs, revision of the DAMP and the MS4 permit. We don't believe that the provisions of this Order in any way impedes the taskforce efforts to revise the TMDLs or the beneficial uses.
131	130	RCFCD, 42	<u>Schedule, pp45</u>	As described in Attachment 1, the MS4 Permittee budgets have been reduced significantly in Fiscal Year 2009-2010, and are expected to go through another round of cuts in Fiscal Year 2010-2011. The Permittees budgets are not likely to begin stabilizing until Fiscal Year 2011-2012. Further, the MS4 Permittees have already carefully allocated available resources for the current Fiscal Year (2009-2010) and are unlikely to have available funds to begin significant program enhancements within the remaining sixth months of the current fiscal year. Further, cuts expected in 2010-2011 will unnecessarily put the proposed Permit compliance programs in direct competition with critical infrastructure maintenance and health, safety, and social services that will be vying for the same resources. The MS4 Permittees are therefore requesting that the bulk of Permit compliance programs be extended to 18 months following adoption of the Tentative Order.	Some of the requested changes have been made; see the October 22, 2009 draft.

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	A	B	C	D	E
131	131	RCFCD, 46	XII.E.6.d.ii	We understand that the 2 and 10-year retention/infiltration criteria contained in the Tentative Order were selected based on detention design criteria specified in the 2005 WQMP. However, the Permittees strongly disagree with the underlying assumption that the current application of the 2 and 10-year flow and volume control criteria to retention/infiltration is equivalent to the prior application of these criteria to detention under the 2005 WQMP. A 10-year volume retention standard would result in nearly twice the impact to Riverside County in comparison to Orange County's 2-year standard. The impact of 100-year onsite retention (referenced in Section XII.E.6.d.ii.5) of the Tentative Order) would be much more significant, but was not included in this table due to time constraints. The record, however, does not provide a basis to support the escalated criteria in Riverside County NPDES MS4 Permit. The Permittees therefore request that Section XII.E.6.d.ii.1) and XII.E.6.d.ii.5) be modified consistent with the Orange County NPDES MS4 Permit by removing the reference to the 10-year criteria storm events.	Requested changes made; see the October 22, 2009 draft.
132	132		Section XII.E.6.d.ii.1) and XII.E.6.d.ii.5)	The Permittees therefore request that Section XII.E.6.d.ii.1) and XII.E.6.d.ii.5) be modified consistent with the Orange County NPDES MS4 Permit by removing the reference to the 10-year criteria storm events.	
133	133		XII.E.6.d.iii.1)	The Permittees also request the following text be added to Section XII.E.6.d.iii.1) consistent with language in the Orange County NPDES MS4 Permit: "Mimicking the pre-development hydrograph with the post-development hydrograph, for a 2- year return frequency storm. Generally, the hydrologic conditions of concern are not significant, if the post-development hydrograph is no more than 10% greater than pre-development hydrograph. In cases where excess volume cannot be infiltrated or captured and reused, discharge from the site must be limited to a flow rate no greater than 110% of the pre-development 2-year peak flow."	
134					Changed to allow 5% deviation and flow no greater than 105% of the pre-development 2 year peak flow.

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	A	B	C	D	E
135	134	RCFCD, 52	Section XII.E.6.ii.4	<p>Finally, the Permittees recommend revision of Section XII.E.6.ii.4) as follows:</p> <p>4) All downstream conveyance channels to an adequate sump (e.g. Prado Dam, Lake Elsinore, Canyon Lake, Santa Ana River or other lake, reservoir or natural resistant feature) that will receive runoff from the project</p> <p>a) are engineered, hardened and regularly maintained to ensure design flow capacity, and no sensitive stream habitat areas will be affected; or</p> <p>b) <u>not identified in the Permittees hydromodification sensitivity maps required in Section XII.B.3.b., and no sensitive stream habitat areas will be affected. This exemption is only applicable to conveyance channels that have been fully and properly approved (including CEQA review, and permitted by U.S. Army Corps of Engineers, Regional Board, and California Department of Fish and Game) by September 1, 2004.</u> The Permittees specifically request that this section be modified consistent with the Permittees' recommendations contained in Section XII of Attachment 7. The proposed revisions would remove inadvertent application of Hydromodification criteria to Riverside County projects while still ensuring protection of downstream Receiving Waters.</p>	Requested changes made; see the October 22, 2009 draft.